

No. 85-1563

Supreme Court, U.S.

FILED

JUL 14 1986

CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ALBERT GREENWOOD BROWN, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE CALIFORNIA
SUPREME COURT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED March 22, 1986
CERTIORARI GRANTED June 2, 1986

JOINT APPENDIX

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CHRONOLOGICAL LIST OF DATES
ON PLEADINGS FILED; VERDICTS
AND FINDINGS RENDERED, AND
SENTENCE

SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF RIVERSIDE

People v. Albert Greenwood Brown, Jr.
No. CR 18104

DATE	PROCEEDINGS
10/5/81	Amended information filed.
2/4/82	Brown is found guilty of first degree murder, special circumstances, and forcible rape as charged in the information.
2/19/82	Jury fixes the penalty on the murder conviction with special circumstances as death.
2/22/82	Brown's motion for modification of the verdict is denied.
2/25/82	Brown is sentenced to death.

[Clerk's Transcript p. 1]

Filed in Superior Court of the State of
California, in and for the County of
Riverside, October 5, 1981

DONALD D. SULLIVAN, COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

THE PEOPLE OF THE STATE OF CALIFORNIA)

Plaintiff)

v.)

ALBERT GREENWOOD BROWN, JR.)

Defendant)

Case No. CR 18104

AMENDED INFORMATION

COUNT I

The District Attorney of the
County of Riverside hereby accuses ALBERT
GREENWOOD BROWN, JR., of a violation of
Section 187 of the Penal Code, a felony,
in that on or about October 28, 1980, in
the County of Riverside, State of

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California, he did wilfully, unlawfully, and with malice aforethought murder SUSAN LOUISE JORDAN, a human being.

The District Attorney of the County of Riverside further charges that before the commission of the offense hereinabove set forth in Count I of the Amended Information, that the murder of SUSAN LOUISE JORDAN was committed by defendant(s) ALBERT GREENWOOD BROWN, JR., while the defendant(s) was engaged in the commission of, attempted commission of, and immediate flight after committing and attempting to commit the crime of RAPE in violation of Section 261 of the Penal Code, within the meaning of Penal Code Section 190.2(a)(17)(iii).

COUNT II

For a further and separate cause of action, being a different

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offense from but connected in its commission with the charge(s) set forth in Count(s) I hereof, the District Attorney of the County of Riverside hereby accuses ALBERT GREENWOOD BROWN, JR. of a violation of Section 261, Subdivision 2 and Subdivision 3 of the Penal Code, a felony, in that on or about October 28, 1980, in the County of Riverside, State of California, he did wilfully and unlawfully have and accomplish an act of sexual intercourse with a female person, to wit, SUSAN LOUISE JORDAN, not his wife, where she resisted but her resistance was overcome by force and violence and where she was prevented from resisting by threats of great and immediate bodily harm accompanied by apparent power of execution.

The District Attorney of the County of Riverside further charges that

during the commission of the above offense, the said defendant(s) ALBERT GREENWOOD BROWN, JR. inflicted great bodily injury upon SUSAN LOUISE JORDAN, within the meaning of Penal Code Section 12022.8.

FIRST PRIOR OFFENSE:

The District Attorney of the County of Riverside further charges that before the commission of the offense set forth in Count II of this Amended Information that said defendant, ALBERT GREENWOOD BROWN, JR., was on or about April 18, 1978, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FORCIBLE RAPE, a felony, in violation of Section 261, Subdivision 3 of the Penal Code, and that he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction

during, a period of ten years subsequent to the conclusion of said term, within the meaning of Penal Code Section 667 6(a).

SECOND PRIOR OFFENSE:

The District Attorney of the County of Riverside further charges that before the commission of the offense set forth in Counts I and II of this Amended Information that said defendant, ALBERT GREENWOOD BROWN, JR., was on or about April 18, 1978, in the Superior Court of the State of California, for the County of Riverside, convicted of the crime of FORCIBLE RAPE, a violent felony, in violation of Section 261, Subdivision 3 of the Penal Code, and that he then served a separate term in state prison for said offense(s), and that he did not remain free of prison custody for, and did commit an offense resulting in a

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felony conviction during, a period of ten years subsequent to the conclusion of said term, within the meaning of Penal Code Section 667.5(a).

BYRON C. MORTON
District Attorney
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA

By: Robert G. Spitzer
Deputy District Attorney

Relevant Material from Reporter's
Transcript pp. 6515-6520, line 11

[Discussions Regarding Instructions
at the Penalty Phase]

THE COURT: Okay. We'll take
up anything else you wish.

MR. SPITZER: Your Honor, the
People have submitted the Court's stan-
dard form for requested Jury Instructions
and because the Court doesn't have formal
copies of the 8.84 series regarding the
penalty phase and because those
Instructions contain in them either irre-
levant language or language that the
Supreme Court has held to be
inappropriate or unconstitutional, we
have modified 8.84 and 8.84.2 to conform
with the evidence here.

The Court has previously
received the alternative verdict form,
which is Plaintiff's requested
Instruction Number 4 and in addition in

light of the testimony of the Defendant today we would ask the Court to consider giving CALJEC [sic] 2.62.

MR. MYERS: So far as the Defense is concerned, Your Honor, within the 8.84 series obviously we are not requesting any Jury Instructions on the question of penalty opposing as we do that penalty in this case.

So I think our objection can be noted.

However, assume that the Court will, in fact, give Instructions to the jury there is a modification of 8.84.2 which had previously been submitted to the Court in a Notice of Intention to seek a Jury Instruction.

I believe that Notice was filed in May and I believe the Court may have had the opportunity to review it.

It essentially states that it is a portion essentially of 8.84.2. The words of the motion are happily before the Court. I would advise the Court that it is my understanding that in the case of People versus Murtishaw which has been dealt with by us all on other issues, it is my understanding that the Supreme Court of this State appelled [sic] the rejection of such an Instruction but feel that for the record we must request it at this time as a modification of the CALJEC [sic] form as essentially extraneous materials have been removed by Mr. Spitzer.

THE COURT: Okay, the motion is duly noted and denied.

MR. MYERS: So far as 2.62 is concerned, Your Honor, we would ask that it not be given. It is much more tailored to the determination of guilt

and what I am concerned about is the second paragraph, which if you find that he failed to explain or deny any evidence against him introduced by the Prosecution we feel that that would not be appropriate to give in light of our motion and the Court's subsequent order on that motion.

We chose not to discuss the evidence in the guilt phase of this trial and I don't think it is appropriate to hold Mr. Brown or advise the jury that he might have been expected to explain or deny that rather large amount of evidence that had been introduced by the Prosecution in the case.

Under those circumstances we don't believe that anything need be said about the Defendant's testimony, either his refusal to testify as in the guilt phase or, in fact, that he testified in the proceedings simply as to his

background, aspirations and feelings about the one very serious offense that he had committed in 1977.

And I think it is extraneous and I'm sure that while Mr. Spitzer may not really be able to argue his not explaining really fully on the stand perhaps, but in any event I assume will argue to the jury that they did not hear anything from Mr. Brown indicating remorse or whatever; although we would object to that I suspect Mr. Spitzer will be permitted to make that argument, but so far as this formal Instruction we would feel it is not proper.

THE COURT: Anything you wish to state, Mr. Spitzer?

MR. SPITZER: No, other than with respect to the 2.62 1979 Revision. I agree with counsel that it is tailored in its present form to the guilt phase of

the trial. Nonetheless I think the proposition that it stands for, that is, the adverse inference which may be drawn from a failure of a Defendant who has essentially waived his Fifth Amendment privilege to explain those acts is one that is appropriate in the penalty phase.

The Defendant from his own testimony raised as far as the People are concerned the issue of his guilt by indicating in response to Mr. Myers' question, which I think was, "During the course of these proceedings have you maintained your innocence?"

Mr. Brown's response to that question was, "I do." Indicating certainly in leaving the inference that he was innocent of the charges and certainly raising the spector [sic] before the jury who have to consider obviously very grave

punishments, the idea of sending an innocent man to the gas chamber.

[No Omissions]

I made my objection at the time that the Court made its ruling and would only indicate that an examination of cases over the lunch hour, including the case of People vs. Goss, 105 Cal. App. 3d, 542, the case of People vs. Cartwright, 107 Cal. App. 3d, 402, and the case of, the Supreme Court case of People vs. Redmond, 29 Cal. 3d, 904. These are cases decided in 1980 and 1981 which are the most recent ones I was able to find relating to the right of a defendant to testify on his own behalf in a criminal case and deny culpability for the offense and then go on and proceed.

Those cases, the Goss case and the Cartwright case, stand for the proposition that even an implied denial of

the facts, as occurred here, opens up the door to cross-examination.

In the Goss case, quoting from the Supreme Court case of People vs. McClelland, at 71 Cal. 2d, 793, a 1969 case, the court held that implied denial of the guilt is considered as testimony denying the existence of any evidence relevant to the issue of guilt, which makes cross-examination about the subject of any such evidence properly within the scope of direct examination. It goes on to talk about the proper scope of cross-examination and argument.

The evidence in this particular case that the jury has been told that they can consider includes not simply the evidence that began on February 8, but includes all the evidence that was heard from January 4 in the guilt phase. And the defendant's desire not to comment on

that, I think the Court has heard about, yet I don't believe that the jury should be left asking themselves what they should do with the denial of guilt.

I believe an instruction is appropriate and that the People should be entitled to argue, as Mr. Myers indicated we would argue, about the lack of remorse and the lack of explanation.

I would submit it on those remarks.

Oh, one other thing, Your Honor, relating to Counsel's representation on the Murteshaw [sic] case, just so the Court is aware, we had cited the Murteshaw [sic] case to the Court last week and the Court, I know took care to read it. Murteshaw, [sic] to the best of my knowledge, did not make a specific holding on the requested instruction by the defense counsel, but rather held that

the burden of proof in the penalty phase was different than in the guilt phase, and there is a discussion about the relatively limited burden of proof and as a result of that limited burden of proof, the prejudicial nature of the testimony of the psychiatrist in that case was perhaps exaggerated and things of that sort.

So it was sort of a -- there was no holding, it was dicta in that case, although the Supreme Court made clear what its feelings were on the burden of proof. That's it, Your Honor.

THE COURT: I will sustain your objection to 2.62.

In my discussions with members of the Fourth District, 2.62 stands on shaky ground.

With regard to 8.84, we will give it as requested.

8.84.1 we will give it as presented.

And 8.84.2 we will give.

Was there some motion that I haven't ruled on?

MR. MYERS: Yes, Your Honor, it would be the modification 8.84.2 requested, and I believe the Court has that, and I would take it then that if they are given in the manner presented by the District Attorney, our motion is necessarily denied.

THE COURT: Yes.

Is there anything else?

MR. SPITZER: No, Your Honor.

MR. MYERS: No, Your Honor.

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[Reporter's Transcript pp. 6558, line
18-6564.]

Penalty Phase Jury Instructions

THE COURT: Thank you Mr.
Myers.

The defendant in this case has
been found guilty of murder of the first
degree. The charge that the murder was
committed under a special circumstance
has been specially found to be true.

It is the law of this State
that the penalty for a defendant found
guilty of murder of the first degree
shall be death or confinement in the
State Prison for life without possibility
of parole in any case in which the special
circumstance charged in this case has
been specially found true.

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Under the law of this State, you must now determine which of said penalties shall be imposed on the defendant.

You must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.

Both the People and the defendant have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict regardless of what the consequences of such verdict may be.

In determining which penalty is to be imposed on the defendant, you shall consider all of the evidence which has been received during any part of the trial in this case. You shall consider,

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take into account and be guided by the following factors, if applicable:

(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstance found to be true.

(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the expressed or implied threat to use force or violence.

(c) The presence or absence of any prior felony conviction.

(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(e) Whether or not the victim was a participant in the defendant's

homicidal conduct or consented to the homicidal act.

(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

(g) Whether or not the defendant acted under extreme duress or under the substantial domination of another person.

(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or the effects of intoxication.

(i) The age of the defendant at the time of the crime.

(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

It is now your duty to determine which of the two penalties, death or confinement in the state prison for life without possibility of parole, shall be imposed on the defendant.

After having heard all of the evidence, an [sic] after having heard and considered the arguments of counsel, you shall consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances upon which you have been instructed.

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If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death.

(NO OMISSIONS)

However, if you determine that the mitigating circumstances outweigh the aggravating circumstances, you shall impose the sentence of confinement in the State Prison for life without the possibility of parole.

You shall now retire and select one of your number to act as a foreperson who will preside over your deliberations. In order to make a determination as to the penalty, all twelve jurors must agree. Any verdicts that you reach must be dated and signed by the foreperson on a form that will be provided and then you shall return with it to this room.

Your verdict as to the Defendant will be one of the following forms. We, the jury in the above-entitled action fix the penalty under Count I of the Amended Information as death, or We, the jury in the above-entitled action fix the penalty under Count I of the Amended Information as life imprisonment without possibility of parole.

The clerk will be needed to swear the bailiff. In addition, I have asked the bailiff to take you to lunch over at the County Cafeteria, but as in the prior phase of this case you may make your determinations as to recesses and adjournments and again my admonition that you nto converse with anyone concerning the case, even with each other, will apply at any and all times that you are in recess or adjounment.

And that admonition will apply at all times that you are not all twelve together assembled deliberating, and as soon as you have all assembled and are together in the deliberation room, then the admonition no longer will apply as we did in the prior phase.

The clerk will please swear the bailiff.

(Whereupon the clerk swore the bailiff.)

THE COURT: And Miss Newman, Mrs. Tompkin, and Mrs. Thompson, if you would please remain.

(Whereupon the jury retired to deliberate at 11:35.)

THE COURT: And Miss Newman, Mrs. Tompkins, and Mrs. Thompson, if it is agreeable with counsel I would like to release you to go about your usual activities and with the understanding that

you are still on call here until this case is completely concluded.

And we would contact you as soon as it is. If we need to contact you and request you come in or if not, we'll call you to let you know that you have well and faithfully discharged your duties as jurors, and we would like to be sure we have the numbers that our clerk has, the latest numbers where you can be reached at work or at home or wherever you may be.

And if I don't see you again, I would like to thank you very much for your valuable and dutiful service that you have so faithfully attended. Thank you very much.

(Whereupon a recess was taken.)

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(The jury returned at 2:33 p.m. The following proceedings were held in the open court in the presence of the jury.)

THE COURT: It's noted that Mr. Brown is present with his counsel.

People's counsel is present.

All the members of the jury are present and in their places.

Has the jury reached a verdict?

MR. MANN: We have, Your Honor.

THE COURT: Is it unanimous?

MR. MANN: It is unanimous.

THE COURT: We will receive it through the Bailiff.

The defendant will please stand.

The Clerk will read the verdict.

THE CLERK: "The People of the State of California vs. Albert Greenwood Brown, Jr., Case Number CR-18104.

Verdict. We, the jury in the above-entitled action fix the penalty under Count I of the Amended Information as death. Dated February 19, 1982. Signed Roland O. Mann, Foreman."

Ladies and gentlemen, is this your verdict?

(All jurors answered affirmatively.)

THE COURT: You may be seated.

Does either party wish to have the jury polled?

MR. SPITZER: The People would ask that the jury be polled, Your Honor.

From Voir Dire

[Reporter's Transcript p. 420, lines 20-21]

MRS. CAROL HERSHEY

(By Mr. Spitzer)

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JA-30

[Reporter's Transcript p. 426,
lines 24-28]

Okay. And so what we ask you to do is to set aside personal feelings and apply the law just as if in the guilt phase we ask you to set aside bias and prejudice and apply the law.

A. I see.

[Reporter's Transcript p. 1964,
lines 9-10]

MARY ANN GRAY

(By Mr. Spitzer)

[Reporter's Transcript p. 1967,
lines 21-26]

At that stage, as in the first stage, the jurors would have to follow the law and put aside any of their own personal beliefs as to what should happen.

Is there any doubt in your mind right now as to your ability to do that? That is, following the law?

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A. No, that would be the way that I would do it.

[Reporter's Transcript p. 2046
lines 8-9]

DANIEL CALDON

(By Mr. Spitzer)

[Reporter's Transcript p. 2048,
lines 13-25]

Q. Has this crime been committed, are the charges true, things of that sort and to set aside in making that decision, items of personal prejudice and bias as Mr. Myers pointed out, sympathy for the parties, to act as judges unaffected by their own personal beliefs.

Do you think that in arriving at the decision this case, either the guilt phase or more particularly in the penalty phase, you will be tempted to be inclined to worry about what you feel should happen as a person, Daniel Caldon, as opposed to what the law requires?

Essentially I'm asking would you try to second guess the law?

A. No, Sir, I wouldn't.

[Reporter's Transcript p. 3157,
lines 11-12]

JOAN DAGGETT

(By Mr. Spitzer)

[Reporter's Transcript p. 3162,
lines 18-27]

Q. We ask jurors in both phases to put aside feelings of sympathy for the defendant or for the victim's family. Feelings of passion or prejudice. To be coolly analytical in their thinking. Critical of the evidence. Examining it to see if, in fact, the charges are true. Particularly in the penalty phase we ask the jurors to do the same thing and to make a decision based on law and not on their own personal philosophy or belief.

Do you think you would be able to do that?

A. Yes.

[Reporter's Transcript p. 3194,
lines 13-14]

ROLAND MANN

(By Mr. Spitzer)

[Reporter's Transcript p. 3203,
lines 6-19]

Q. Okay.

You understand that in that phase, just as in the first phase, we would ask jurors to put aside feelings of sympathy, passion and prejudice, motivations also putting aside any of their own personal convictions if they ran in conflict with the law.

You have told us you have no quarrel with the law that establishes the death penalty, but all those things would have to be put aside in determining how the law applies to the evidence in this case.

Do you think you would have any trouble doing that?

A. I really think I could handle the situation at the time it's presented under the instructions given me, you know, whatever the evidence is.

[Reporter's Transcript p. 3645,
lines 23-24]

CATHERINE MARTENS

(By Mr. Spitzer)

[Reporter's Transcript p. 3653,
lines 14-21]

Q. We ask jurors in addition to putting aside their own personal knowledge to put aside feelings of passion or prejudice, feelings of sympathy for the Defendant or for the victim's family, feelings of empathy for the Defendant's family and act as judges putting aside those emotional attachments that they may have or naturally want to develop when they sit as judges? Do you understand that?

A. Yes, I do.

From Penalty Phase Testimony

Donald Brown

[Reporter's Transcript pp. 6238,
line 15 - 6248, line 1]

Q. Mr. Brown, do you know the gentleman seated at the end of counsel table?

A. Yes, I do.

Q. Who is that?

A. It is my cousin Albert.

Q. How long have you known Albert Brown?

A. Well, I'm there too, and Albert is. I'm not sure how old he is. He's a few years younger than me. I have known him all his life.

Q. Where do you live at the present time?

A. I live in Tulare, California, which is down near Fresno in between Bakersfield, Fresno, Central Valley.

Q. What is your occupation?

A. At the present time I'm a law clerk with the Public Defender's office in Tulare County. I am a law school graduate.

Q. Are you preparing to take the Bar Examination?

A. I'll be taking the Bar, the part that I haven't passed, next Tuesday, next Wednesday.

Q. So this testimony occurs at a time when you are immersed in study, I would assume?

A. Right.

Q. Are you married?

A. Yes, I am.

Q. And do you have children?

A. No children.

Q. How long have you been working as a clerk with the Public Defender's office in Tulare?

A. I've been working ever since I graduated from law school. That's about approximately a year and a half.

Q. What is your father's name?

A. My father's name is Ernest Brown, Sr.

Q. When you were a child did you have the opportunity to play with and associate with Albert Brown, Jr.?

A. Yes, I did. As cousins we lived in the same town and his father and my father were close and so we saw each other on occasions just as children normally would, you know, throughout our childhood.

Q. As a young person, were there any particular pastimes that you engaged in with your cousin Albert?

A. Well, as I have two brothers and Albert was an only child so on a lot of occasions we would either be at Albert's home or Albert would be at our house or we would be at my grandmother's home, which is in Tulare, and we engaged in normal kids' play, stickball in the street, football, passing back and forth, or just being at each other's houses for family gatherings or being at my grandmother's and Albert and his parents would come by. So those types of occasions are when we would be together.

Q. When Albert was a young child was he an aggressive child?

A. Just the opposite. Albert was the type of person that I can remember as a young child myself at the time. He was very passive -- I think is probably the wrong word for a child in

that sense, but he was very quiet, very quiet type of person as a child.

You always knew when he was amused because he had a certain type of smile that he would give that you would know that he was involved in listening to what you were doing or involved in the play we may be involved in, but he was very mild mannered and even-tempered type of child.

Q. Were you?

A. I'd say I was probably a little bit more aggressive and active just because I had three brothers or two brothers and we were always into something together. So, I guess Albert stuck out in that sense where he was -- he was our cousin, but he wasn't involved in the situation where he had other

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brothers as playmates as I had as a person with two brothers.

Q. Do you have any particular recollections of times together with Albert as a young child that you can recall?

A. The times that I can recall that stick out in my mind would be circumstances usually on say maybe a Saturday where Albert would be brought to our house in Tulare by his mother usually to play with my younger brother Larry who was the same age as Albert, either to play or to go to the school ground together and Albert would spend the whole day with us.

He generally wouldn't stay overnight, but Albert always got along well with everyone that he was with. He

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wasn't the person that stood out for what he did or what he didn't do, but he always got along well.

I remember times when Albert, myself, and my two brothers would be taken care of by my aunt Ludie Brown at my grandmother's home where she would take care of us in the evening, then we would be together. We always got along well.

I can never remember a time where we had a problem as a group of kids which may have been started by Albert. That's just the type of person that he was as a child.

Q. Albert, were there occasions when you or your brothers would go to Albert's house to play?

A. There were occasions, but they were very few and it sticks out in my mind because there were not that many.

Albert and his father and mother lived in a neighborhood which was right next to my mother's sister. You have to understand Tulare is kind of a small town. A lot of people, families, still stay there so it is a very family oriented type of town and we're a very close family. And we just never went to Albert's home that much. We may have been at aunt's home and we would see Albert. That would be more the occasion than actually going to his house in that sense.

[No omissions]

Q. So I take it, from what you said, you don't recall Albert as being an angry or an aggressive or a fighting kind of child?

A. No, not at all. I, myself, could never -- I couldn't think of a situation or I cannot think of a

situation right now where, as a child, I saw him fight with another person, say, another relative, and I never saw him fight with my younger brother, as an example, or me or my older brother.

Q. What is your younger brother's name?

A. His name is Larry Brown.

Q. Where does he live?

A. He lives in Walla Walla, Washington.

Q. What does he do up there?

A. He works for the State Prison there. He is a cook at the Walla Walla State Prison.

Q. Did he take some college to prepare himself for that?

A. Yes, he went to Spokane Community College, that's in Spokane, for a two-year cook program and he got on there as an institutional cook. Albert

hasn't seen him for quite a while and that's probably news for him, too.

Q. And as far as you know, he lives up in Walla Walla at the present time?

A. Yes.

Q. Did you have occasions to see Albert in his adolescent or high school years?

A. Yes, I did. As I say, Albert is the same age as my younger brother, so I was a few years ahead of him in school. But being through Larry and growing up there and being the type of family that we were, we kept in contact with him. I'd see him every now and then and again he was in school and in terms of academics, I can't think of anything that distinguished him in my own mind in terms of what he did or did not do. He did, you know, fairly well in

school. I know when he got into high school he started to grow and fill out and I personally, I always felt that he would be a good athlete and it turned out that in his junior year, I believe he played football, I think he played football in his sophomore and junior years in high school and Albert did very well. He did very well. He was a good team player, again, didn't distinguish himself in terms of a person who caused any problems on the team, but he was a very good player and I saw him play on a number of occasions and was kind of surprised to see he did as well as ~~he~~ did with the temperament that he had to play in a football situation. There is a premium on certain type of contact and controlled violence and he was a very good player.

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Q. And that surprised you,
given his --

A. Temperament as a younger
child and then I could see nothing to
change that as he went into his ado-
lescent years.

Q. Did he still seem to be a
quiet sort of nonassertive individual in
those years off the playing field?

A. Very much so from my con-
tact with him. He seemed to be basically
the same type of person. He developed
into a character that was very -- he was
very quiet. Albert was the type that you
had to speak to instead of necessarily a
conversation starting. He is just that
type of a person. That's, I don't think
that's unusual, but I think that he was
that type of person where you would have

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to start a conversation with him. He wasn't that up front in terms of conversation.

Q. Was Albert known as Albert to you, is that when you talked to him?

A. No, Albert was known as "Tweedle."

And that was his nickname, but I am not sure where the nickname came from, either his mother or father, but we always called him Tweedle. Sometimes, you know, Junior, but I very seldom now even call him that, I mean I guess I do call him that now because he is, you know, he is a grown man, but that was his nickname for as long as he was at home.

Q. So on occasions when I have had an opportunity to talk to the family and to Larry, everyone says Tweedle?

A. That's why, that's right.

It's always from Albert Jr. to Tweedle.

Q. You played football also, did you not?

A. U-huh, played in high school and college.

Q. And baseball as well?

A. Uh-huh, basketball.

Q. And to your knowledge did Albert participate in any other sports formally with teams, baseball or basketball?

A. I believe Albert may have played some Little League, maybe a good year or two, I am not certain, but I don't believe he played any basketball, if I remember right.

Q. You also were in the military service, were you not?

A. I was in the Marine Corps for two years.

Q. Did you have an opportunity to meet your cousin Albert when he was in the Marine Corps or shortly thereafter?

A. No, I didn't have a chance to meet him because I was in the service in '68 through '70 and I was discharged and he went in the service, I think '70 or '71, '72, somewhere in there. He was in for four years and I didn't get a chance to see him while he was in the service. I saw him once while he was on leave and then I saw him when he just got out of the Marine Corps and as being someone who, as an ex-Marine, there is certain types of experiences that are common to people who are in the Marine Corps and that you can look back on with some enjoyment and kind of laugh once you are out. Boot camp being one of those things. I remember talking with Albert

about that, about how he enjoyed boot camp or didn't enjoy it. How it went and this was when he just had gotten out of boot camp and was home on leave. And I just remember seeing the change in him. I thought that he matured kind of in a silent manner, I guess that's the best way of seeing it, because he was still that type of person. He was still that type of quiet, he was a young man then, but he was a quiet type of person. He felt he had done okay in the boot camp. I believe his specialty was wiring telephone communications, something to do with that, I believe, and from all the indications he did very well in that, in his specialty while he was in the service.

Q. You were aware that Albert had, before this case arose, had been convicted of a rape previously?

A. Yes, I was.

Q. Were you surprised at that or the development of this case?

A. Very honestly, I was. It was a situation where Albert was close to me and our family in the sense that we grew up together, had relationships for a number of years and to hear that these things had occurred, it did surprise me. Prior to being separated from him in the sense that these things occurred up in this area and we, not knowing what the basis for them were and putting that together with Albert's personality as I knew him and as people in our family knew him, the fit didn't seem to be correct.

Q. That kind of violent thing seemed out of character, I take it?

A. Yes, the violent nature of the first offense that he was convicted of, and then this offense didn't seem to be consistent with the type of person

that he had been in terms of how I had known him throughout my life.

Q. You are his cousin, you are not an unbiased witness in these proceedings?

A. No, it's clear.

I mean, I understand, I feel very much for him and it's not a sense of help in the sense of telling anything that is false, to help in a way that testimony can allow people on the jury to get to know Albert as a person. I think it's important.

(NO OMISSIONS)

MR. MYERS: I have no further questions.

Albert Brown Sr.

[Reporter's Transcript p. 6299,
lines 20-23]

Q. Mr. Brown, how old are you?

A. Fifty-four.

Q. What is your present occupation?

A. Psychiatric technician.

[Reporter's Transcript p. 6300,
lines 16-20]

Q. You know who is sitting at the end of counsel table?

A. Yes.

Q. Your son Albert and named after you?

[Reporter's Transcript pp. 6301,
line 23 - 6309, line 16]

Q. Your first wife, Dorothy and you were divorced some time ago. When was that?

A. '64.

Q. How old was Albert when you were divorced from your wife, first wife?

A. He was just getting ready to go to school. That would make him about six years old.

Q. Before that time what kind of a child was he as you had the chance to observe him at home?

A. Well, personally I thought he was very -- what can a father say? A very loving child. He was no real problem, just like little kids are, but he was very attentive, polite.

He was just what I consider just a typical, normal young man, normal young child.

Q. Your brothers came down today and all from Tulare and Porterville.

Do you recall observing him playing with his cousins, your brother's children?

A. Yes, him and Donald, the fellow that testified earlier, his cousin, they used to spend not a lot of time together but they would -- my little

sister Ludie, she would baby-sit with the group of them mostly.

And so basically they got along real good. They never had no real problems.

Q. At the time Albert started into public school is about when the divorce and break-up of your first marriage occurred, is that right?

A. Right. When we were separated he hadn't started to school yet. He started to pre-school like I say, he must have been about pre-school, probably about five, I guess, five or six.

Q. Did you have a chance to see him on a regular basis after your separation from your first wife?

A. No, not really.

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Well, when me and my first wife was divorced, it was kind of stormy. I'll put it that way.

So, I didn't get to see him as much as I would have liked to and rather than really -- in other words, I just figured it was best not to push it for his sake and I was just sort of just -- I would say I would see him more or less when Dorothy said it was all right.

Sometimes she would say it was okay and then at the last minute she would change her mind, stuff like that.

I didn't really push it because I thought it was better for the child not to see a rivalry between the parents, conflicts. It was enough, the fact that we were separated, you know, so I didn't want him to see any hostility between the two of us.

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I don't think he really did at that stage.

Q. You had the opportunity to see him at least some of the time, though, I take it?

A. Right, mm-hmm.

Q. As he got older, did you have a chance to see him more often than the first part of the separation or divorce?

A. Yes, because as he got older like I used to tell Dorothy, I says, "When he gets a little older he will seek me out," which he did.

So, he would come to see me at times and she knew it all the time but we always have been able to -- well, I have a good relationship with him and he'd more or less -- he'd believe what I would tell him and I wouldn't tell him anything wrong.

To me he was a very obedient son.

Q. Do you know whether he had any serious problems getting along with other kids in school?

A. Well, I wouldn't say serious.

Q. Back in junior high?

A. Not really serious problems, not to my knowledge, a loner, really. He stays to himself most of the time and I don't think I could say he had any problems in his relationship with his peers or anything like that.

He would go overboard as far as trying to please someone else in order to be accepted in a group, for example. That's he would go overboard as to doing favors or stuff like that to enhance

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chances of being accepted by his peers, whether he had to or not. He just did that.

[No Omissions.]

Q. Take the other kids for rides, that sort of thing?

A. Yes. And, oh, and then, too, if he had something that he really valued, a toy or even so much as to say a BB gun or something like that and some other kid wanted it, he would probably just give it to them. I don't know whether that's good or bad, but I can recall one incident where Dorothy just bought him a new bicycle and, you know what a bicycle costs, and the little kid across the street had a BB gun and they just decided that they would trade, the two of them, a BB gun for a bicycle. Needless to say, we couldn't let that

stand. But it was just the fact that he said he wanted it and that was that.

Q. Throughout Albert's adolescent years and into the high school years, I take it your former wife still had custody of him?

A. She had custody all up until he went into the service. Out of high school, he went into the service.

Q. About how old was he when he went into the Marine Corps?

A. Let's see, a senior in high school, probably about eighteen, somewhere along in there. Horrible age.

Q. This was a senior in high school?

A. Yes, right after he got out of high school.

Q. Do you know whether there had been any particular event that precipitated his leaving high school?

A. I don't know whether the events actually caused him to leave high school, but it was a incident there involving, they say he had a weapon at school that was discharged in the schoolroom. I never saw the weapon. I really -- I don't really have any real details on it, but I don't think that was the reason for him leaving school, though, or going into the Marines.

Q. You don't know what action the school took?

A. I really don't know what action the school took on that, I really don't.

Q. When he went into the Marines, did you get the chance to see him at times on leaves?

A. When he would come home on leave, yes.

Q. How did he seem to be reacting to the Marine Corps?

A. Well, when he first came back from the Marines I looked at him, I said it wasn't him, you know, because of course when he went in he was not fat, but he had a little weight on him and when he got through boot training in the Marines, when he came home, he looked like a racehorse. Skinny, but, well, all muscle, that's what he was like and he had that Marine attitude that they were the greatest, you know, proud, stuff like that.

Q. Did he talk to you much about his later experiences in the Marine Corps after boot camp or after his overseas time, that sort of thing?

A. Well, not extensively, but just before he got out of the service he said he had a problem in the service with

the non-coms or something like that and it had something to do with the Klan organization there in the service. They got all fouled up in that and just what the real outcome is as to what really happened, I don't really know.

Q. When he got out of the service your wife indicated that he stayed with you for some time?

A. Right.

Q. During that time, how was he adjusting to civilian life again?

A. Well, I think he was adjusting real well because he came up with talent that I didn't realize he had. Different type jobs he had.

For example, he had, he applied for a cook's job at a place called Perko's, it's a chain of restaurants we got in the Valley, and Smith Markets, and I went down there one day to order some

food and I looked behind the kitchen and he is back there cooking. I didn't even know he could cook. And he left that job and he got a job as a night watchman and, you see, when he was in the service, actually he was in the communications but when he came out he applied to work for the telephone company and he never could get in there.

Then he'd apply at other places where he could use his training as communications and he was either overqualified or something like that, usually. So he never did really get a chance to work in the line of work that he did when he was in the service.

So, then, he took odd jobs, started working at K-Mart as a stereo installer in cars or something like that, he has always been interested in electrical or electronics, like that.

Q. You have continued to live in the Tulare area all this time, I take it?

A. Except when I was in the service, yes.

Q. What branch were you in?

A. Army, drafted.

Q. Your wife, Martha, has indicated that many times you and the two younger children and she would visit Albert after he was in the prison?

A. Oh, at San Luis Obispo.

Q. The last few years?

A. Uh-huh.

Q. About how often do you recall being able to go?

A. Oh, while he was there, I would go at least once a month I would be down there, sometimes twice a month. And the kids, when they would go with me, they would like to go because it's so

close to the beach, Morro Bay, it's only 10 miles from the beach. So we would go by and spend the afternoon with him and then we'd leave there and go up to Morro Bay to the Beach. In other words, made sort of an outing for the kids. And they looked forward to seeing him, you know, they hadn't been around him that much, but that was their big brother and he always did take up a lot of time with them, he would play with them.

Q. The case that caused him to be sent to San Luis Obispo and the circumstances of this case, did they surprise you?

A. Definitely. The reason it surprised me was he had never had any trouble like that before and he had never had any -- he always had, I'd say, a good rapport where he could meet friends,

males and females, so he never had any trouble going out with girls. In fact, girls chased him, and then when I found out what he was accused of, to me it just didn't make sense, and that's the way it was.

Q. The violent side appeared to be out of character for Albert?

A. Well, I have never seen him violent. Just actually just the opposite. He would walk away from something rather than really get into a confrontation if possible. But basically I do the same thing, if I can walk away from a situation, I would do that, so if you can't walk away where you got to defend yourself, that's about the size of it.

Q. You are not an unbiased witness, I would think?

A. Unbiased, probably not.

Q. You want the jury to show mercy to your son?

A. Definitely.

MR. MYERS: I have no further questions.

Dr. Robert Summerour

[Reporter's Transcript p. 6384,
lines 25-26]

Q. Dr. Summerour, what is your occupation?

A. I'm a physician specializing in psychiatry.

[Reporter's Transcript p. 6387,
lines 6-8]

Q. You have had occasion in the past months, have you not, to talk to, to examine and interview Albert Brown?

A. Yes.

[Reporter's Transcript p. 6402
lines 2-18]

In that interview, I have an impression, from what he tells me of a

young boy who has been separated from his father who he idealizes, wishes to be closer to him, but is primarily with his mother. Sees his mother as treating him unfairly and harshly and being a rather shy, passive child until high school, when he begins to become more aggressive. He gives the impression of no difficulty in the sexual area. He is sexually active as an adolescent, really denies any sexual problems. Difficulty adjusting to the Marines with probably first real contact with serious racial differences between people, something that had not been much of a problem for him in his life in Tulare where he had grown up.

He had gone during that time, then, with kind of a resistance, you might say, to what he felt was unfair treatment. In fact, he told me in

another interview that he and another group of black men would take pride in how they would outsmart the ranking officers. This, I think, was a way of coping with what he was experiencing in the military.

[Reporter's Transcript pp. 6403, line 1 - 6407, line 4]

A. Well, I think the most important interview that we had occurred on the 10th of February. And it's in that interview that Albert states that he had had problems with women. Before that time, he is basically telling me that he has not done too badly with them. He has not had much difficulty, but in that interview he tells me that as an adolescent he never had a sexual encounter. In fact, he never had a sexual encounter at all until he was in the Marines when his buddies bought a prostitute for him,

and that in the Marines he had had a total of three contacts with prostitutes during which he had actually accomplished intercourse. But many other contacts when he could not perform. And, in fact, even with the prostitutes he had not readily achieved erection and in fact has had problems with impotence intermittently throughout his life.

He told me then that he was even afraid to kiss girls, that he was embarrassed to approach them if he had a romantic interest in them. Told me of his friendships with girls during high school, that he would really relate to mainly his sisters. He would protect them at school, he could watch out for them, he would walk them home because of these relationships would therefore develop into romantic relationships.

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He denied that he had experienced an orgasm in any way until his first experience in the military when he was about eighteen. Denied masturbation.

Now, normally an individual, as they develop sexually, will during pre-adolescent age, through the pubital changes, will begin to have sexual changes and will experience those feelings as frightening, but generally there is a certain degree of exploratory masturbatory behavior and that is normal as long as it is not to excess. There is comfort then in time with developing girlfriend attachments and petting.

According to the moral values, many adolescents will not engage in intercourse but they can engage in petting behavior without being frightened. And in Albert's case, it

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appears that he could never comfortably approach girls that he had a romantic interest in and, in fact, even privately was uncomfortable with his sexual feelings.

Now, why this was true, we talked about this a little bit, and I think it may relate to what he felt was his mother's attitude about his sexual feelings and sexuality. He said that he remembered his mother telling him that if he did "dirty things" with girls that his fingers would fall off and that one of his legs would get shorter. And he said he had an uncle who missing some fingers and he thought in his way of understanding was that he must have done something dirty with girls when he was a little boy.

In spite of being shy with girls and not confident of his own

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sexuality, and I think probably his own sense of masculinity that was emerging at that time, he was acting in a kind of macho bravado way so that people saw him as being sexually active, as being fine in that area and he enjoyed that people thought that about him because it helped him feel better about himself.

So his first sexual experiences were in the military with prostitutes and in that setting he claims that he was impotent and that it was very difficult for him to get or maintain an erection. He would set about to try to be sexual with prostitutes and then not follow through because he would become shy and uncomfortable. Said it would embarrass him. Claimed that he never talked to his father about sexuality, didn't have talks about this and he never told anyone that he was unsure of himself in this area.

(NO OMISSIONS)

The next sexual experience was after he got out of the Marines and he met a woman who was a distant -- not a blood relative -- but a relative of his father's second wife named Betty Jane who was in his words a nymphomaniac, real aggressive who approached him.

He claims that this woman talked to his father about whether or not it would be okay if they became involved sexually. She really took all the initiative. He claims the first time that they were in bed together they had foreplay for about eight hours and he was unable to get an erection for those eight hours, and then he says finally he got an erection and had intercourse and then they had a sexual relationship only that lasted for a brief time where she would always be the aggressor.

He would basically be passive and she would take all the initiation, and with her stimulation, her aggressive stimulation with him, he could obtain an erection but otherwise could not on his own.

During the same time he claims that he attempted to have intercourse with a girl named Chris who was a sister of Terry and Terry was the girl he was really interested in. He liked Terry who was about seventeen or so.

He wanted to date her, wanted to get romantically involved with her, but her father -- Terry was not black. I think she was Spanish and her father did not approve and would not allow him to date this girl and he felt that they were pushing Chris off on him.

He claims that Chris wanted to have intercourse but she was not a

virgin, she was younger, and that one evening they attempted in the backyard of her house but he was unable to get an erection.

He claims that after his sexual encounter with Betty Jane that he had no sexual contact until the rape of Kelly.

[Reporter's Transcript pp. 6408
line 7 - 6409 line 13]

Now, from this interview I'm impressed that Mr. Brown has a greater degree of sexual disfunctioning than he has admitted to before, and basically he has covered this up both to his parents and his peer group that basically he is a shy man and that he has some problems in this area about feeling confident about himself as a man and relating to women in a romantic way.

And while I cannot draw any definite conclusions about the psycho-

pathology here, I think if one ties together his relationship with his mother, separation from his father, and at least up through the range of Kelly, his behavior with girls, you see that his relationships with girls are very important to him.

He likes to be admired by them. He liked to be appreciated. He's kind of like a big brother. He likes for others to think of him as being competent with girls and sure of himself but, in fact, he is basically afraid of sexual contact. He's afraid he will fail.

In fact, I think he has had experiences where he had performance anxiety and as a consequence was impotent and may on a deeper psychological level feel that his sexual wishes or desires are, in fact, bad and dirty and that he should not - does not have a sense of

what is normal in the way of sexual
attraction and behavior.

In the behavior with the youths
they are able to act out in a way that he
cannot and I think he identifies to some
degree with their level of sexual deve-
lopment because he himself is not
sexually developed beyond a pre-
adolescent kind of stage.

The only sexual experiences he
had had were with situations where he did
not have to be assertive, where either
the sexual partner was aggressive and
took charge and he was passive or else
under the conditions of prostitution
where sex is paid for.

Even in this case on the ini-
tiation of someone else.

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[Reporter's Transcript pp. 6412,
line 19 - 6414, line 16]

A. Well, the thing that I think, I believe that what motivates Albert Brown is primarily in terms of rape behavior, I think, is primarily sexual desire or sexual wishes which are impaired by his fair of sexual contact with women. And I think that if we look at the encounter that he had with Kelly and the way he dealt with it afterwards, that while he uses aggression to control her and to, in a sense, have his way with her, he does not mutilate her, he does not harm her physically beyond the degree to cause her to cooperate with him. Then his response after this rape is to develop a romantic idea about their relationship.

What he thinks of as a relationship, even telling himself that she liked him, that he was pleasing to her,

that he had shamed her and that he had done a terrible thing to her which he should try to make up for. But somehow he was going to become special to her and her family.

Now, to me, that fits the history suggesting that this man, in real life, is unable to have a normal relationship, romantic relationship, with a woman. He can only have a sexual relationship if there is some lack of responsibility on his part. He is unable to integrate tenderness and warmth and love which is something that he longs for with a woman as sex, but he sees sex as bad and dirty and with Kelly, I think that he in time takes out the sexual part and begins to think of them, really, more in an ideal way. This is, of course, unrealistic. I think that supports the theory that he is primarily motivated by

sexual drive. And also we don't see that this man, in my view, is an impulsive individual. He is impulsive, but not impulsive to the degree that one would say he is a sociopath. He is able to work, he has worked regularly at jobs, he values education and has made efforts to develop in that division. He has maintained relationships with his family. His parents say that he was always generous with family members and was able to care about people. But never got really close to anyone. So I don't see him as an impulsive-ridden, sociopathic individual.

Looking at the aggressive side, there is a history of fighting in school. Primarily over girls. Primarily over whether or not he should, early on, be interested in a black girl that he wasn't interested in, the girl he was interested

in, the girl he was interested in wasn't black. There is fighting later, I think, in high school, as a part of his overcompensating for his feelings of weakness. I think that the gun incident which was very serious, was really an accident, but he was careless in taking the gun to school and he took the gun to school because it was part of his image. Beyond that, I don't understand why he took it.

But we don't see him committing violent crimes throughout his history except for associated with rape. We don't see, really, a violent aggressive man that people are afraid of. People didn't feel uncomfortable around him. People weren't afraid of Albert. So I don't think aggression is the primary problem. The primary problem has to do with sexual drive and difficulty in that area and shame.

[Reporter's Transcript p. 6415,
lines 7-23]

A. Well, I can suggest a possible understanding of that.

I think that Mr. Brown is ashamed and really afraid to face this problem. And I think facing it, the way he put it was he didn't want to make Kelly any more uncomfortable than she had to be because it was so hard for her to go through it, and I think perhaps that's what he consciously think - [sic] is his motivation for avoiding her. But I think it's more likely that he cannot face her without feeling uncomfortable and he will avoid that. He will avoid facing anything, if he can, that suggests that he has a sexual problem or that he is inadequate in any way as a man.

And when you rape a woman in this society, you are not thought of as being very adequate as a man. I don't

think he thinks of himself as adequate as a man, even though he, at times has tried to act that way. So he can't face her in real life because that's too painful. He can only face her in his fantasies.

From Prosecutor's Closing Argument

[Reporter's Transcript p. 6522,
lines 11-13]

The People may proceed with argument, Mr. Spitzer.

MR. SPITZER: Thank you, Your Honor.

Good day, ladies and gentlemen.

[Reporter's Transcript pp. 6522,
line 28 - 6524, line 27]

On January 4 of this year, a little over a month and a half ago, you all sat down for the first time as a group. You took an oath before God and began to listen to testimony.

"Each of you do solemnly swear that you will well and truly try the matter now pending

before this Court and a true verdict render therein according to the evidence and the instructions of the Court, so help you God."

During the voir dire examination, that interview process that occurred from the middle of October to the middle of December, we asked each of you whether or not you would be able to follow the law, to put aside your own personal beliefs and feelings about things such as the death penalty or crime and decide this case on the law. To determine which of two alternative penalties, both of them serious, should be imposed in this case.

Each of you indicated that you could do that. That you could follow the law. Doing that, ladies and gentlemen, following the law, makes you judges. It is your duty as judges in this case to direct your attention and focus on the

law and the evidence. That is exactly what you did in the first phase of the case when we asked you to decide the guilt of the defendant based on the law and the evidence.

Putting aside personal feelings of passions, prejudice, sympathy. Your verdict in this case, ladies and gentlemen, has to be one based on the law. It is not a vote from the heart and cannot be one. The judge will instruct you that you must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and the defendant have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case and that you reach a just verdict regardless of what the consequences of that verdict may be.

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None of you, as I pointed out during your interviews, volunteered for this job. None of you went to law school, studied law, became proficient, ran for public office, accepted black robes to judge people. But you are judges. In this society, we ask that the community, individuals without legal training who have a stake in the community, judge serious cases as you are confronted with here. And as such, you are representatives of that community, individuals who promised that you could put your feelings aside and apply the law of this community.

You knew when you started out what the possible consequences of your decisions might be. But you are going to be asked to apply the law without regard to those consequences.

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What is the law, ladies and gentlemen? How can human beings, how can Judges make a decision between those two alternative punishments without regard to personal feelings? Where is your focus to be?

Remember, during the voir dire examination, I told you that the Court would not leave you adrift to your own feelings to decide which of the two punishments should be imposed. That the Court would provide you with guidelines, instructions, a way to make these decisions and, indeed, that will happen.

[Reporter's Transcript pp. 6540,
line 12 - 6542, line 8]

Finally, ladies and gentlemen, there is the factor of other circumstances which extenuate the gravity of the crime, even though not a legal excuse, if present, it might mitigate, if absent there is no mitigation.

There is no evidence, ladies and gentlemen, I would suggest to you, which extenuates the gravity of this crime, the killing of Susan Jordan that has been presented. No explanation, no remorse and I might comment at this time regarding the other witnesses outside of Dr. Summerour called by the defense.

Mr. Myers brought to you in two days a parade of relatives who admitted that they were biased witnesses in the case, who told us a lot about the defendant from their point of view, They told us what a good boy he was at the time in his youth when they knew him. And he brought them gifts and that he cared after his siblings. They did not testify, ladies and gentlemen, regarding any of the factors which relate to your decision in this case. Their testimony here, ladies and gentlemen, I would

suggest was a blatant attempt by the defense to inject personal feelings in the case, to make the defendant appear human, to make you feel for the defendant, and although that is admirable in the context of an advocate trying to do his job, you ladies and gentlemen must steel yourselves against those kinds of feelings in reaching a decision in this case.

As the Judge will instruct you, you must not be swayed by sympathy. One thing I think we learn from some of those defense witnesses is that in some sense to them the defendant was as much a stranger to them as he was to Kelly Porterfield or to Susan Jordan. Many of them apparently had turned a blind eye towards the defendant's problems when he was growing up, many of them were deceived by his actions. Some didn't

or still don't know the true extent of the defendant's criminality. It's hard to believe that young Troy or Larry Jackson are really aware of the seriousness of the crimes here. You should not be surprised at that.

Rapists and killers are, unfortunately, among us and it's always a surprise that someone you know gets charged with a crime this serious, this horrible.

As I indicated in my closing remarks during the guilt phase, one of the tragedies of this case is the effect of the case on the defendant's family or the defendant's mother, Mrs. Jackson. But, as judges, ladies and gentlemen, you have to steel yourself against those emotions and in order to do that, you have to focus on the law, the requirements of the law. Hard as it is to say, ladies

and gentlemen, the request that you heard to show mercy staged by Mr. Myers in this case have to be ignored and set aside. You have a duty beyond that and those appeals, ladies and gentlemen, would be as inappropriate and improper for you to consider as would be the appeals from Susan Jordan's family to show vengeance or retribution on the defendant, or Kelly Porterfield's parents coming in angry.

[Reporter's Transcript pp. 6543, line 7 - 6543, line 20]

You are judges and it is your duty to apply the law, to follow the instructions which the judge will give you and listen and pay attention to the evidence which you have already done. And when you go through the factors, you will see with each factor there is no mitigation, circumstances of the crime, no mitigation. Absence of criminal activity, no mitigation; absence of prior

felony conviction, no mitigation.

Whether or not the victim was a participant, no mitigation. No mitigation, no mitigation, no mitigation, no mitigation. Age of the defendant, no mitigation. Whether or not the defendant was an accomplice, no mitigation. Other circumstances, no mitigation, ladies and gentlemen, but there are factors in aggravation.

And in the weighing process, they outweigh the absence of nothing.

[Reporter's Transcript pp. 6544, line 3 - 6545, line 18]

This is not going to be a pleasant decision to render. All 12 of you have to decide the case and be unanimous. You have to be able to put aside these personal feelings and emotions in deciding the case.

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How do you do that? You do that by focusing on the law. Doing what you swore an oath to do. Doing what you told us at the beginning of the trial you were capable of doing.

Judges who sit up on benches and wear black robes often get very bad raps, they have a very difficult job to do and they receive little comfort in making these hard decisions.

(NO OMISSIONS)

Any comfort they receive is in knowing that they did their duty. They followed their oath. They applied the law. They acted fairly under the law.

You, ladies and gentlemen, in working together have to focus on that law. If the motion and other sentiments begin to creep in, ask yourselves what is

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my duty under the law? Am I looking at the legal requirements, am I following my oath?

You are a community of minds, ladies and gentlemen, and represent that greater community. It is your duty to work together and collectively you have the strength and wisdom to make the decision. It is very hard and unpleasant to make.

You have that duty to render a true verdict according to the evidence on the Instructions of the Court focusing on the law, listening to the evidence. Being judges in this case, you make the decision and make it unanimously and the People of the State of California, ladies and gentlemen, can't ask anymore.

Thank you.

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[Clerk's Transcript, page 166]

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE

Page #1 of 2 Pages

PEOPLE VS ALBERT GREENWOOD BROWN, JR.,

Date & Dept: 1-4-82 5

Number: CR 18104

Counsel: District Attorney by Joseph
Peter Myers

Robert Spitzer, Deputy

Reporter: William Beam and Dorothy
Dawson

Proceeding: 33rd DAY JURY TRIAL -

VIOLATION OF SECTIONS & CHARGES:

187PC(190.2(a)(17)Sub(iii)P.C.(Count I)

261 Sub 2 & 3 P.C. (12022.8PC)(Count II)

PRIORS: 261 Sub 3 P.C., 261 Sub 3 P.C.

(Defendant Status: CUSTODY)

(NOTED: Using two Court
Reporters - running a daily transcript)

People represented as indicated
and defendant present with counsel.

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Alternate Juror - Brian Reiss
is present and seated in the courtroom

Court and counsel take up the
matter of his new employment, subse-
quently he is excused by stipulation.

Officer Michael Whedon is
designated as the Peoples' investigating
officer - so ordered.

Defense counsel moves to allow
defendant's mother to remain in the court
room during the entre (sic) trial -
GRANTED.

All members of the jury and the
alternate jurors are present and seated
in the court room.

Jury and alternate jurors are
sworn as trial jurors, VIZ:

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- | | |
|----------------|----------------|
| 1. C. Hershey | 7. H. De Mers |
| 2. D. Hayek | 8. D. Caldon |
| 3. M. Gray | 9. C. Martens |
| 4. J. Lovelace | 10. R. Mann |
| 5. J. Daggett | 11. I. Hamblen |
| 6. T. Hunter | 12. C. Brown |

Alternates Sworn:

1. D. Newman
2. J. Tomkins
3. J. Thompson

Counsel make opening statements.

Karen Jane Jordan, sworn and examined

Photo of the victim marked
Peoles' (sic) Identification #4

Vans' Tennis shoe marked
People's Identification #7-f;

Susans' clothing marked
Peoples' Identification as follows:

_____, Judge _____, Clerk

JA-100

**NOTE REGARDING THE JUDGMENT OF
THE CALIFORNIA SUPREME COURT**

The opinion and judgment of the
California Supreme Court in People v.
Albert G. Brown, Jr., Crim. 85-1563
(Superior Ct. No. CR 18104) is contained
in the Appendix to the Petition for Writ
of Certiorari at pages A-1 through A-104.

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

No: 85-1563
October Term, 1985

JOHN K. VAN DE KAMP
Attorney General of
the State of California
JAY M. BLOOM
Deputy Attorney General

PEOPLE OF THE STATE OF
CALIFORNIA,

Petitioner,

v.

110 West A Street, Suite 700
San Diego, California 92101

ALBERT GREENWOOD BROWN, JR.,

Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within JOINT APPENDIX as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 40 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing three copies in a separate envelope addressed for and to each addressee named as follows:

Robert Scarlett
Monica Knox
Deputy State Public Defenders
107 South Broadway, Suite 9111
Los Angeles, CA 90012

Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California, on the 14 day of July 1986.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, July 14, 1986.

Subscribed and sworn to before me
this 14th day of July 1986.

Brenda J. Locke

Notary Public in and for said County and State

Clifford E. Reed, Jr.
CLIFFORD E. REED, JR.

